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15 **UNITED STATES DISTRICT COURT**  
16  
**CENTRAL DISTRICT OF CALIFORNIA**

17 JANET GARCIA, GLADYS  
18 ZEPEDA, MIRIAM ZAMORA, ALI  
19 EL-BEY, PETER DIOCSON JR,  
20 MARQUIS ASHLEY, JAMES  
21 HAUGABROOK, individuals,  
22 KTown for All, an  
23 unincorporated association;  
24 ASSOCIATION FOR  
25 RESPONSIBLE AND EQUITABLE  
26 PUBLIC SPENDING, an  
27 unincorporated association,  
28

18 Plaintiffs,  
19 v.  
20 CITY OF LOS ANGELES, a  
21 municipal entity; DOES 1-7,  
22 Defendants.

23 ) CASE NO. 2:19-cv-06182-DSF-PLA  
24 ) Assigned to: Hon. Dale S. Fischer

25 )  
26 ) **PLAINTIFFS' STATEMENT  
27 ) REGARDING THE EFFECT OF  
28 ) THE SECOND AMENDED  
Complaint on the Motion  
for Preliminary  
Injunction**

29 )  
30 ) Judge: Hon. Dale S. Fischer  
31 ) Hearing Date: April 6, 2020  
32 ) Time: 1:30 p.m.  
33 ) Courtroom: 7D

34 )  
35 ) Complaint Filed Date: July 18, 2019

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1                   **PLAINTIFFS' STATEMENT REGARDING THE EFFECT OF THE SECOND**  
 2                   **AMENDED COMPLAINT ON THE MOTION FOR PRELIMINARY**  
 3                   **INJUNCTION**

4                   In response to the Court's March 13, 2020 Order (Dkt. 44), Plaintiffs submit  
 5 this brief to inform the Court that the Second Amended Complaint, filed by Plaintiffs  
 6 on March 12, 2020 (Dkt. 43) (the "SAC"), has no impact on Plaintiffs' pending  
 7 motion for preliminary injunction, filed by Plaintiffs Ktown for All ("KFA"), Peter  
 8 Diocson Jr. and Marquis Ashley on February 26, 2020 (Dkt. 38) (the "Motion").

9                   The Court granted Plaintiffs leave to amend their complaint in its Order  
 10 granting in part and denying in part Defendant City of Los Angeles's (the "City")  
 11 motion to dismiss pursuant to Rule 12(b)(1), which sought to dismiss the  
 12 organizational plaintiffs—KFA and the Association for Responsible and Equitable  
 13 Public Spending ("AREPS")—for lack of standing. *See Order Granting in Part and*  
 14 *Denying in Part Defendant's Motion to Dismiss for Lack of Subject Matter*  
 15 *Jurisdiction, ("Order), Dkt. 37, at 18.* The Court ruled that KFA had direct standing  
 16 based on allegations that the organization had suffered diversion of resources and  
 17 frustration of mission, as alleged in the complaint. *See id. at 11.* The Court granted  
 18 Plaintiffs leave to amend to clarify which claims and remedies KFA was bringing on  
 19 behalf of its members. *Id. at 15, 18.*

20                   Plaintiffs filed a Second Amended Complaint ("SAC") on March 12, 2020. *See*  
 21 *Dkt. 43.* In the SAC, Plaintiffs accordingly amended the causes of action to clarify  
 22 that KFA was seeking only injunctive and declaratory relief and not damages for its  
 23 members. KFA further clarified that it was not bringing the claim under California  
 24 Civil Code 2080 on behalf of its members. *See SAC at p. 50-60.*

25                   Plaintiff KFA's limited amendments in the SAC have no impact on Plaintiffs'  
 26 motion for Preliminary Injunction. In general, filing an amended complaint does not  
 27 affect a motion for preliminary injunction. *See Choudhry v. Regents of the Univ. of*  
 28 *California, No. 16-CV-05281-RS, 2016 WL 6611067, at \*2 & n.1 (N.D. Cal. Nov. 9,*

1 2016) (ruling on a preliminary injunction despite the filing of an intervening amended  
 2 complaint); *Save Strawberry Canyon v. Dep't of Energy*, 613 F. Supp. 2d 1177, 1191  
 3 (N.D. Cal. 2009), *adhered to*, No. C 08-03494 WHA, 2009 WL 1098888 (N.D. Cal.  
 4 Apr. 22, 2009) (ruling on a motion for preliminary injunction, filed January 20, 2009  
 5 (Dkt. 46) even though there was an amended complaint (Dkt. 73)).

6 Here, Plaintiffs made only minor changes to the SAC to address the Court's  
 7 ruling on KFA's associational standing. None of the amendments have any impact on  
 8 the allegations relevant to the Preliminary Injunction. First, the clarification had no  
 9 impact on Ktown for All's direct standing, based on diversion of resources and  
 10 frustration of mission, and it was on this basis that KFA filed the motion for  
 11 preliminary injunction. Second, the clarification has no impact on Plaintiffs' request  
 12 for prospective relief, since in the SAC, KFA made changes only to clarify it was not  
 13 seeking damages for its members. These clarifications did not impact the existing  
 14 claims for injunctive relief.<sup>1</sup>

15 KFA clarifying that it has an *alternative* basis to establish standing in this case  
 16 beyond the organizational standing the Court has already found has no impact on the  
 17 Motion. All that is required at the preliminary injunction phase is an "organizational  
 18 affirmation[] of harm." *E.g., Valle del Sol. v. Whiting*, 732 F.3d 1006, 1018, 1029  
 19 (9th Cir. 2013) (granting preliminary injunction and holding that future diversion of  
 20 resources, and not specific amounts past resources diverted, is the standard for  
 21 prospective relief). The Court found that KFA has organizational standing (*see* Dkt.  
 22 37 at 6-11); the Court need not make any additional findings or inquiry.

23  
 24 \_\_\_\_\_  
 25 <sup>1</sup> Not only was the complaint already sufficient for organizational standing, as  
 26 this court found, Plaintiffs presented evidence, as noted in the reply, that unhoused  
 27 members move due to sweeps: both state of mind evidence, *Wagner v. Cty. of  
 28 Maricopa*, 747 F.3d 1048, 1053 (9th Cir. 2013), and evidence that members have  
 moved after sweeps, *Soranno's Gasco, Inc. v. Morgan*, 874 F.2d 1310, 1316 (9th Cir.  
 1989) (jury can infer the intent behind an event from its timing). Plaintiffs also  
 explained how movement of unhoused members due to sweeps impacts Plaintiffs'  
 ability to fulfill their mission of connecting housed and unhoused neighbors.

1           The only other amendments made to the SAC were allegations regarding the  
2 harm to AREPS from additional expenditures which are not relevant to the Motion.  
3 AREPS did not move for a preliminary injunction and thus the additional allegations  
4 concerning AREPS will not affect the preliminary injunction.

5           Finally, Plaintiffs did not make any amendments in the SAC related to standing  
6 for the two other Plaintiffs who filed the Motion, Diocson and Ashley.

7           In sum, although Plaintiffs amended the complaint to bolster the standing of the  
8 two organizational Plaintiffs, that amendment has no impact on Plaintiffs KFA,  
9 Dioscon, and Ashley's pending motion for preliminary injunction.

10           Dated: March 25, 2020

11           Respectfully submitted,

12           LEGAL AID FOUNDATION OF LOS ANGELES

13           /s/ Shayla Myers

14           Shayla Myers

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20           /s/ Catherine Sweetser

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23           KIRKLAND & ELLIS LLP

24           /s/ Benjamin Herbert

25           Benjamin Allen Herbert

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27 Peter Diocson Jr., Marquis Ashley, Ali El-Bey, and  
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### **LOCAL RULE 5-4.3.4 ATTESTATION**

I attest that Plaintiff's counsel, Shayla Myers and Catherine Sweetser, concurs in this filing's content and has authorized the filing.

DATED: March 25, 2020

## KIRKLAND & ELLIS LLP

By: /s/ Benjamin Herbert

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## Benjamin Allen Herbert

*Attorneys for Plaintiffs Ktown for All, Janet Garcia, Peter Diocson Jr., Marquis Ashley, Ali El-Bey, and Association for Responsible and Equitable Public Spending.*